

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PETER SANTOS MURILLO,

CASE NO. C20-0484JLR

Petitioner,

**ORDER GRANTING MOTION
TO AMEND PETITION**

UNITED STATES OF AMERICA,

Respondent.

Before the court is petitioner Peter Santos Murillo’s motion to amend his 28 § 2255 petition. (*See* Mot. (Dkt. # 19).) Respondent United States of America Government”) opposes the motion to amend. (*See* Resp. (Dkt. # 23).) The court considered the motion, the relevant portions of the record, and the applicable law. fully advised, the court GRANTS Mr. Murillo’s motion to amend his § 2255 n.

On March 27, 2020, pursuant to 28 U.S.C. § 2255, Mr. Murillo filed a petition for his corpus or motion to vacate, set aside, or correct his sentence. (*See* Pet. (Dkt.

1 # 1)); *see also United States v. Murillo*, No. CR16-0113JLR (W.D. Wash.). The
 2 Government filed its answer to Mr. Murillo’s petition on May 27, 2020 (*see* Ans. (Dkt.
 3 # 13)), and the court noted the Government’s answer for consideration on June 19, 2020
 4 (*see* Dkt. # 14). On June 12, 2020, Murillo moved for an extension of time to file his
 5 response to the Government’s answer. (*See* Mot. for Extension (Dkt. # 18).) On June 30,
 6 2020, the court granted Mr. Murillo’s motion for an extension, and set an August 3, 2020,
 7 due date for Mr. Murillo’s response to the Government’s answer and an August 7, 2020,
 8 deadline for the Government’s reply. (*See* 6/30/20 Order (Dkt. # 20).) While Mr.
 9 Murillo’s motion for an extension was pending, Mr. Murillo separately filed the current
 10 motion to amend his § 2255 petition.¹ (*See* Mot. at 1.) Mr. Murillo also filed a
 11 “memorandum of law” in support of his amended § 2255 petition. (*See* Mem. (Dkt.
 12 # 21).)

13 Federal Rule of Civil Procedure 15 “applies to habeas petitions with the same
 14 force that it applies to garden-variety civil cases.” *James v. Pliler*, 269 F.3d 1124, 1126
 15 (9th Cir. 2001) (citations and internal quotations omitted). Rule 15(a)(2) provides that
 16 “[t]he court should freely give leave [to amend] when justice so requires.” Fed. R. Civ.
 17 P. 15(a)(2). “[T]his policy is to be applied with extreme liberality.” *Owens v. Kaiser*

18 ¹ The Government makes repeated reference to the fact that Mr. Murillo’s motion for an
 19 extension of time asked the court for leave to amend the petition in the event that the court
 20 denied his request for an extension to file his response. (*See* Resp. at 2 (citing Mot. for
 21 Extension at 2-3); Gov’t Mot. for Extension (Dkt. # 22) at 1-2 (same).) But the current motion to
 22 amend—which was filed separately from Mr. Murillo’s motion for an extension of time—makes
 no reference to Mr. Murillo’s motion for an extension of time. (*See generally* Mot.). The court
 fails to see how Mr. Murillo’s one-sentence request for alternative relief on a motion that the
 court has already ruled on has any relevance to Mr. Murillo’s current motion to amend his
 petition.

1 | *Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of*
 2 | *Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)); *see also DCD Programs,*
 3 | *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

4 Pursuant to this liberal standard, the court concludes that leave to amend is
 5 warranted here. The Government concedes that the claims in Mr. Murillo’s amended
 6 petition are “likely timely” (*see* Resp. at 3-5) and instead argues that Mr. Murillo’s
 7 motion should be denied because his amended claims and allegations are “meritless,”
 8 “immaterial”, or unnecessary because they merely raise “revised arguments/statements
 9 [Mr. Murillo] could include in his [response] to the [G]overnment’s answer” (*see id.* at 3-
 10 8). Although “[f]utility of amendment can, by itself, justify the denial of a motion for
 11 leave to amend,” *U.S. ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th
 12 Cir. 2001) (citations omitted); an amendment is futile on the merits where “no set of facts
 13 can be proved under the amendment to the pleadings that would constitute a valid and
 14 sufficient claim or defense,” *see Sweaney v. Ada Cty., Idaho*, 119 F.3d 1385, 1393 (9th
 15 Cir. 1997) (citations omitted). The Government makes no attempt to apply that standard
 16 to Mr. Murillo’s proposed amended petition. (*See generally* Resp.) Instead, the
 17 Government offers arguments against Mr. Murillo’s amended petition that are best
 18 reserved for the court’s consideration of the merits of this matter. (*See id.* at 5-8.) Thus,
 19 in accordance with “the underlying purpose of Rule 15(a) of the Federal Rules of Civil
 20 Procedure, which was to facilitate decisions on merits,” the court concludes that Mr.
 21 Murillo is entitled to leave to amend his petition to include all of the claims and facts that
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1 Mr. Murillo believes are relevant so that the court can give his petition full consideration
2 on the merits.² *See James*, 269 F.3d at 1126.

3 For the reasons set forth above, the court GRANTS Mr. Murillo's motion to
4 amend (Dkt. # 19). The court DIRECTS the Clerk to file Mr. Murillo's proposed
5 amended petition—which is attached as Attachment A to Mr. Murillo's motion to amend
6 (*see* Mot. at 2-89)—on the docket. The amended petition shall be considered the
7 operative 28 U.S.C. § 2255 petition for purposes of this case. The court further ORDERS
8 the Government to file its answer to Mr. Murillo's amended petition by no later than
9 August 5, 2020, and to note the answer for consideration on August 21, 2020. If the
10 Government files an answer, Mr. Murillo may file a response by no later than August 17,
11 2020, and the Government may file a reply by August 21, 2020. Both parties have now
12 had significant time to develop and respond to the arguments and issues presented in this

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19 ² The court also rejects the Government's argument that the court should ignore Mr.
20 Murillo's memorandum of law. (*See* Resp. at 8 (citing Mem.).) Although the court previously
21 denied Mr. Murillo's request for an extension of time to supplement his petition with a
memorandum of law on the grounds that “[t]he rules governing Section 2255 proceedings do not
include a procedure through which Mr. Murillo may supplement his habeas motion with a
‘memorandum of law’” (*see* 5/8/20 Order (Dkt. # 12) at 2), Mr. Murillo cured the infirmity in his
prior request by filing his memorandum of law simultaneously with his amended petition (*see*
Mot. at 1 (indicating that the motion to amend was sent to the court on June 15, 2020); Mem. at
15 (indicating that Mr. Murillo's memorandum of law was sent to the court on June 15, 2020)).

1 case. As such, the court cautions the parties that these deadlines are firm and the court is
2 unlikely to grant additional extensions.

3 Dated this 22nd day of July, 2020.

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7 JAMES L. ROBART
8 United States District Judge
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